THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 8th November, 2006

W.P.No.21270 of 2005

Between:

Zonal Fruits & Vegetables
Producers Welfare Association,
Eluru, rep. by its President
Alapati Amarendranath Dutt … Petitioner

and

The Govt. of A.P., rep. by the
Principal Secretary, Secretariat,
Hyderabad & others … Respondents

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ORAL ORDER:

Heard both sides.

By invoking the powers under Section 32 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short 'the Act'), Government issued G.O.Ms.No.287, Food and Agriculture (Mktg.I) Department, dated 29-4-1989 prohibiting Commission Agents from their operation in four Agricultural Market Committees and the same was published in the Official Gazette. However, thereafter, on a representation made by the Eluru Lemon Merchants Association on 9-3-2005, the Assistant Director of Marketing recommended to the Joint Director to consider their representation for issuance of licences to the Commission Agents by re-introducing commission agency system only with regard to lime in Eluru Market; in turn, the Joint Director recommended the matter to the Commissioner and Director of Markets. On considering the recommendations of the Commissioner, the impugned G.O.Rt.No.496, Agriculture and Cooperation (M.II.1) Department, dated 25-5-2005 was issued making amendments to G.O.Ms.No.287, dated 29-4-1989 and permitting the 3rd respondent to issue commission agent licences to the existing lime traders.

Learned counsel for the petitioner states that the amendment issued in G.O.Ms.No.287, dated 29-4-1989, through the impugned G.O. is not in consistent with the law. The said amendment was not

carried out as required under Section 32 read with Section 2(ix) of the Act; therefore, the same is liable to be set aside.

A detailed counter affidavit has been filed by respondents 1 and 2 and a separate counter affidavit has been filed by the 3rd respondent denying the allegations made by the petitioner.

It is the contention of respondents 1 and 2 that in view of the powers vested in it under Section 32 of the Act, the Government has issued the present amendment. Under Section 32 of the Act, it can prohibit and also regulate the issue of licences to Commission Agents. Further, nothing in Section 32 of the Act shall prevent the market committee from issuing licences to commission Agents operating in the market during the pendency of issuance of the notification. Further, there is no necessity of notifying the amendment under the impugned G.O. as required under Section 2(ix) of the Act, since the amendment was made as a temporary measure. The impugned G.O. was issued keeping the interest of the farmers in subjecting them for levying of service tax, which is very high and if commission agents are appointed, it will come down to 4% instead of 8%, which is charged now against the purchases.

Learned Standing Counsel for the 3rd respondent advanced the same arguments. He also stated that the commission agents are not impleaded; therefore, the Writ Petition is not maintainable and is liable to be dismissed on this ground alone.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

Before going into the merits of the case, it may be necessary to notice the 'Amendment' in the impugned Order, which reads as under:

"Permission to the Agrl.Market Committee, Eluru for issue of

Commission agent licences to the existing lime traders to the extent of operation of commission agent system only for the limes at Market Yard, Eluru."

It may also be necessary to notice Sections 2(ix) and 32 of the Act, which read as under:

"**2(ix)** '*notification'* means a notification published in the Andhra Pradesh Gazette, and the word 'notified' shall be construed accordingly.

32. Power of the Government to regulate or prohibit commission agents:- Where, in the opinion of the Government, it is considered necessary so to do, they may, by notification, regulate or prohibit the commission agents operating in the market.

Provided that nothing in this section shall prevent the market committee from issuing licences to commission agents operating in the market until the issue of notification under this section."

There is no dispute that the Government has got power either to regulate or prohibit Commission Agents operating in the Agricultural Markets. But, Section 32 of the Act contemplates that such regulation or prohibition has to be done by way of a notification and not otherwise. The notification has been defined, as noticed above, under Section 2(ix) of the Act. Therefore, unless and until the amendment in the impugned G.O.Rt.No.496, dated 25-5-2005 is notified as required under Section 32 read with Section 2(ix) of the Act, the amendment cannot be said to be properly made as required under law. In this case, admittedly, no notification as required under Section 32 read with Section 2(ix) of the Act was issued. Learned Government Pleader placed the record before the Court relating to the amendment and fairly conceded that there is no gazette notification. Therefore, the G.O. under challenge cannot be said to be a proper amendment. As such, there is no need to go into all other aspects. On this ground alone, the impugned Order is liable to be set aside.

Yet another argument of Sri Madhava Reddy, learned standing counsel for the 3rd respondent, is that under the proviso to Section 32 of the Act, nothing prevents the market committee from issuing licences to the commission agents operating in the market until the issuance of the notification. The proviso postulates the action to be initiated at the beginning of the constitution of a market committee, but has no relevance for a situation of this nature. Here, under the earlier G.O.Ms.No.287, dated 29-4-1989, there is a prohibition of appointment of commission agents in Eluru Market. Unless the said G.O. is properly amended, the impugned G.O. cannot be said to be valid or in view of the proviso to Section 32 of the Act, the market committee is at liberty to grant licences for commission agents as a temporary measure.

Accordingly, the Writ Petition is allowed and the G.O.Rt.No.496, Agriculture and Cooperation (M.II.1) Department, dated 25-5-2005 is set aside. No order as to costs.

08-11-2006

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